

## REMARKS

In response to the above-identified Office Action, Applicant amends the application and seeks reconsideration thereof. In this response, three claims have been amended, one claim has been added and no claims have been cancelled. Accordingly, Claims 1-30 are pending.

### Correction to the Specification

Applicant has corrected a typographical error in the Specification. Approval is hereby requested.

### Claims Rejected Under 35 U.S.C. §102

The Examiner has rejected Claims 1-4, 8-15 and 18-29 under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 5,831,621 issued to Pito ("Pito"). Applicant respectively traverses this rejection.

It is axiomatic that to anticipate a claim, every element of the claim must be disclosed within a single reference. As an initial matter, the Examiner rejects 1, 13 and 27 under identical rationales citing to column 5, lines 24-48 and Figure 1 in Pito. However, Claim 1 claims, the digitizer and orientation fixture as independent units while Claim 13 requires that they be coupled integrally as a single unit. The Examiner cannot have it both ways. Pito is either one or the other, but cannot be both. There is no explicit teaching of coupling as a single unit nor is there an explicit teaching of physically independent units. The Examiner infers that they are independent units from Figure 1 drawing, which is merely a schematic view. Thus, holding with the Examiner's initial interpretation, Claim 13 is not anticipated by Pito because Pito fails to teach the digitizer and orientation and fixture integrally coupled as a single unit. Additionally,

Pito fails to teach or suggest that the digitizer uses a linear image sensor. Thus, for this additional reason, Claim 13 is not anticipated.

Leaving aside for the time being whether the Examiner's interpretation of Pito as teaching physically independent units is correct, Applicant has amended Claim 1 to reflect that the physically independent units have no predefined relative position. For Pito to function properly, the scanner must know the relative location of the turntable. Because Pito fails to teach or suggest a manner in which that relative location may be discerned, that location must be a given for the system to operate. See, for example, column 5, it is useful to think of a positioning the cylindrical scanner at some point on a circle whose center coincides with that of the turntable in order to define the work space of the cylindrical scanner. (Column 5, lines 41-45). Thus, assuming only for the sake of argument, that Pito in fact teaches physically independent units, they necessarily have a predefined relative position. Thus, Claim 1 as amended is not anticipated by Pito.

With respect to Claim 27, Applicant has amended Claim 27 to clarify that the rescan has the purpose of improving the quality of the data previously captured corresponding to the point of interest. This is distinct from Pito which says nothing about the quality of the data captured, but rather discerns voids in the surfaces of the object captured. Stated slightly differently, once Pito's system has established a line of sight to all surfaces of the object, there is no teaching or suggestion of qualitative improvement of the data corresponding to those surfaces. Accordingly, Claim 27 as amended is also not anticipated by Pito.

With respect to Claim 2, the Examiner posits that determining the range from the range camera to the surface of the object is equivalent to automatically locating the relative position of the orientation fixture. Applicant respectfully disagrees. First and

foremost as set forth above, Pito must know the relative position of the orientation fixture prior to beginning scanning. This is precisely the limitation the system claimed in Claim 2 avoids. The ability of the digitizer to find the orientation fixture, (such as by imaging indicia on its surface, that change is in a known way based on distance) increases the flexibility of the invented system. Perhaps this dichotomy can be made more clear by pointing out that if the turntable of Pito is not placed in a known relative position, the scanner will have no way to find or image the object and therefore cannot even discern the distance between the object and the digitizer as the Examiner posits. Thus, Claim 2 is not anticipated by Pito.

Regarding Claims 3 and 14, the mere mention of calibration in Pito fails to disclose the automatic calibration claimed in Claim 3. Moreover, the Examiner may not rely on the Doctrine of Inherency because automatic calibration is not necessarily occurring. Rather, as is much more likely in the lab environment in which Pito's next best view problem was solved, the calibration was manual. Thus, Claims 3 and 14 are not anticipated by Pito.

With respect to Claims 8, 9 and 18, the Examiner has incorrectly relied on the Doctrine of Inherency for the self-contained power source. Applicant notes that it is not only possible, but in fact virtually certain given the model scanner explicitly cited in the reference that the digitizer and in all likelihood, the turntable, received power from a wall outlet. Not, "a self-contained power source" such as a battery for example. The Examiner is not entitled to rely on the Doctrine of Inherency unless the allegedly inherent feature must necessarily be present. Such is not the case here and therefore Claims 8, 9 and 18 are not anticipated by Pito.

With respect to Claim 10, the Examiner asserts that selection of the workspace is synonymous with scanning for a distinct feature. Applicant respectfully submits that

this is substantially the converse. If one is required to select a workspace and maintain a defined relative position, there is no need to acquire the orientation fixture by scanning for distinctive features as claimed in Claim 10. The feature of Claim 10 is neither taught nor suggested by Pito. With respect to Claim 11, the case is even more clear, there is no local energy source such as, for example, an RF, IR or other optical transmitters which permits the digitizer to acquire the orientation fixture. Applicant has searched Pito including the cited passages and has been unable to find any teaching or suggestion of such an element. Thus, neither Claim 10 or 11 are anticipated by Pito.

Applicant has amended Claim 29 to be in independent form. Applicant respectfully submits that to the extent that Pito teaches any rescan, it is with the same scanner. The fact that the settings may be changed does not change the "capture method." Pito fails to teach that the scanner is capable of different capture methods. A capture method as reflected in the Specification, would be, for example, profilometry, projected pattern, stereography, etc. The absence of a disclosure of different capture methods in Pito precludes Pito teaching that a rescan is conducted using a different capture method than the original scan. Moreover, since the rescan of Pito is designed to fill voids created by the original capture method, it inherently requires overlap, this militates against an interpretation that Pito teaches different capture methods for rescans.

The remaining claims not explicitly discussed above are patentable at least because they are dependent on patentable independent claims. In view of the foregoing, it is respectfully requested that the rejections of Claims 1-4, 8-15 and 18-29 under 35 U.S.C. §102 as being anticipated by Pito be withdrawn.

The Examiner has rejected Claims 20-26 under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 5,799,082 to Murphy, et al. ("Murphy"). Applicant respectfully traverses this rejection.

Murphy teaches a GPS camera that has a position determining system (PDS) signal receiver/processor which is either integral to the camera or connected by a cable or wireless link. Murphy fails to teach or suggest "receiving over a distributed network a request to authorize operation of a lockable image capture system at a node remote from the image capture system and coupled to the distributed network" (emphasis added). Applicant has been unable to find a teaching of a distributed network in the first instance. To the extent that Murphy teaches anything lockable is not the capture of the image, but rather the ability to download the image after capture. Thus, even the passage cited by the Examiner belies the Examiner's position that Claim 20 is anticipated. Murphy also fails to teach or suggest the second element of Claim 20, i.e., "sending an authorization data to the image capture system across a distributed network, such that the image captured system is unlocked and enabled to capture an image" (emphasis added). Thus, Murphy fails to anticipate Claim 20 since Claim 20 is not anticipated by dependent Claims 21 and 22 are also not anticipated. It is respectfully submitted that the rejection of these claims should be withdrawn.

With respect to Claim 23, Applicant respectfully submits that Murphy fails to disclose, "allowing access to the image data upon receipt of the authorization from a remote node on a distributed network." All that Murphy teaches is that the download must occur with the use of a special key held by an authorized digital frame downloader. There is no teaching or suggestion that this authorized digital frame downloader received authorization from a remote node on a distributed network. Rather, it is much more likely that the authorized digital downloader is a local terminal

to which the GPS camera may be connected. Thus, Claim 23 and its dependent claims are not anticipated and therefore patentable over Murphy. As an additional matter, there is certainly no teaching or suggestion in the cited passages of Murphy of disabling local storage of the encrypted image data as claimed in Claim 25 nor is there disclosure of uploading the encrypted image data to a remote node as claimed in Claim 26. Thus, it is respectfully requested that for these additional reasons, the rejection of Claims 23-26 be withdrawn.

In the event the Examiner elects to maintain these rejections, it is requested that the Examiner explicitly point out where in the reference these features may be found.

**Claims Rejected Under 35 U.S.C. §103**

The Examiner has rejected Claims 5-7 and 16-17 under 35 U.S.C. §103 as being unpatentable over Pito in view of International Publication No. WO 96/02106 issued to Vellacott ("Vellacott"). Applicant respectfully traverses this rejection.

Applicant respectfully submits that because Vellacott fails to cure the deficiencies discussed above in connection with the independent claims, these claims are also patentable. Moreover, Applicant respectfully submits that there is no motivation to combine Pito and Vellacott and that a combination premised on the Examiner's gestalt notion of a more robust system is guided by hindsight and therefore inappropriate. If the Examiner elects to maintain this rejection, it is respectfully requested that the Examiner provide a motivation for the combination, either from the references or from the problem to be resolved without the guidance of Applicant's disclosure. In view of the foregoing, it is respectfully requested that the rejection under 35 U.S.C. §103 be withdrawn.

Claim 30 is former Claim 5 rewritten in independent form. It is respectfully submitted that the hindsight argument above applies. Additionally, Vellacott teached a

network interface to the exclusion of a host computer. This teaching of the elimination of a host computer by providing the network interface directly is the camera teaches away from the host claimed in Claim 30. Thus, Claim 30 is not rendered obvious at least for these reasons.

### CONCLUSION

In view of the foregoing, it is believed that all claims now pending are now in condition for allowance and such action is earnestly solicited at the earliest possible date. If there are any additional fees due in connection with the filing of this response, please charge those fees to our Deposit Account No. 02-2666. Questions regarding this matter should be directed to the undersigned at (310) 207-3800.

Respectfully submitted,

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### CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail with sufficient postage in an envelope addressed to: Mail Stop Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on May 27, 2003.

*Susan M. Barrette* 5/27/2003  
Susan M. Barrette Date